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BEFORE THE ARIZONA CORPORATION COMMISSION

2006 SEP -1 A 11: 57

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Commissioner

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Arizona Corporation Commission

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IN THE MATTER OF QWEST
CORPORATION'S APPLICATION FOR
ARBITRATION PROCEDURE AND
APPROVAL OF INTERCONNECTION
AGREEMENT WITH HANDY PAGE,
PURSUANT TO SECTION 252(B) OF THE
COMMUNICATIONS ACT OF 1934, AS
AMENDED BY THE
TELECOMMUNICATIONS ACT OF 1996,
AND THE APPLICABLE STATE LAWS

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T-03693A-06-0175

QWEST CORPORATION'S
RESPONSE BRIEF
REGARDING INCLUSION OF "WIDE
AREA CALLING" IN THE SECTION
252(b) ARBITRATION OF PAGING
INTERCONNECTION AGREEMENT

Qwest Corporation ("Qwest") hereby files its Response Brief on the issue of whether Qwest's "Wide Area Calling" ("WAC") offering should be subject to negotiation and arbitration under Section 252 of the Telecommunications Act of 1996 (the "Act").

I. INTRODUCTION

Qwest and the Staff of the Arizona Corporation Commission ("Staff") are in essential agreement on the question. Qwest and Staff both conclude that the Federal Communications Commission ("FCC") completely resolved the issue in its *TSR Wireless Order*.¹ WAC is not an

¹ Memorandum Opinion and Order, *In the Matter of TSR Wireless, LLC, et al., Complainants, v.*

1 interconnection service or a service which is covered by the FCC's reciprocal compensation
2 arrangements and Section 252 of the Act. Both Staff and Qwest conclude in their respective
3 opening filings that Qwest's WAC offering is not a Section 251 service. Therefore, WAC falls
4 outside of the parties' interconnection obligations. Further, the Staff and Qwest agree that
5 tariffing is an appropriate method of assessing charges for WAC. The FCC's rule 51.703(b)
6 does not prohibit Qwest from charging for WAC. In summary, none of the WAC issues raised
7 are properly included in the arbitration.

8 In its Opening Brief, Interstate Wireless, Inc. d/b/a Handy Page ("Handy Page")
9 disagrees at every turn. However, all of Handy Page's arguments and assertions hang by the
10 narrow thread of Handy Page's attempt to distinguish the FCC's ruling in the *TSR Wireless*
11 *Order*. Once the FCC's ruling that Qwest's WAC offering is not interconnection is
12 acknowledged, all of Handy Page's re-arguments of that question fail.

14 II. DISCUSSION

16 A. THE FCC'S DECISION IN THE *TSR WIRELESS ORDER*, WHICH VALIDATED 17 THE QWEST WAC TARIFF IN ARIZONA, DECIDES THE EXACT SAME 18 ISSUES RAISED BY HANDY PAGE

19 The FCC ruled in the *TSR Wireless Order* that WAC is not necessary for a paging
20 provider to interconnect with Qwest and that Qwest was not required to offer WAC service.
21 Handy Page tries to distinguish the FCC's ruling in its *TSR Wireless Order*, by claiming that
22 there is something about how Qwest provisions WAC in Arizona that justifies a different
23 conclusion. That argument holds no merit. In fact, the named complainant in that proceeding
24 was TSR Wireless LLC, which provided CMRS one-way paging service to subscribers in

25 *U S WEST Communications, Inc., et al., Defendants*, 15 FCC Rcd 11166 (Rel. June 21, 2000)
26 ("*TSR Wireless Order*"). A copy of the *TSR Wireless Order* was attached to Qwest's Opening
Brief as Exhibit A.

1 Arizona.² It was TSR which asserted in that litigation that §51.703(b) of the FCC's rules
2 prohibited Qwest from charging for WAC.³ The WAC tariff that TSR challenged in 2000, and
3 which Handy Pages challenges now on the same grounds, is the same tariff, and is the same
4 offering.⁴ Since the FCC's conclusion regarding WAC was reached in the context of an Arizona
5 paging carrier challenging the validity of the same Arizona WAC tariff and the same Arizona
6 WAC offering that is in effect today, Handy Page's attempts to dodge the *TSR Wireless Order*
7 fail. Handy Page merely seeks to re-argue the same question definitively decided by the FCC.

8 Indeed, most of Handy Page's remaining arguments are either restatements of its faulty
9 premise, or are moot once their faulty premise is disposed of by the FCC's decision in the *TSR*
10 *Wireless Order*.

11
12 **B. NOT ALL ILEC OFFERINGS PURCHASED BY CMRS PROVIDERS MUST BE**
13 **INCLUDED IN AN INTERCONNECTION AGREEMENT.**

14 Handy Page argues on Page 3 of its Opening Brief that the language in Qwest's WAC
15 tariff "supports its antiquated notion that it 'sells' interconnected telephone service to fellow
16 carriers." Handy Page's argument fails for three reasons. First, as the tariff recognizes, WAC is
17 a billing service, not a telephone service.⁵ Second, as the FCC ruled in *TSR Wireless*, "[WAC]
18 is not necessary for interconnection or for the provision of TSR's service to its customers."⁶ The
19 FCC went on to conclude, "Indeed, LECs are not obligated under our rules to provide such
20 services at all[.]"⁷ And finally, the premise of Handy Page's argument is fundamentally flawed
21 in any event. There are telephone services that ILECs can and do sell to CMRS providers that do
22 not have to be provided pursuant to an interconnection agreement, because they do not constitute

23 ² *Id.*, ¶7.

24 ³ *Id.*, ¶30.

25 ⁴ See Second Declaration of Robert Weinstein, attached hereto as Exhibit A.

25 ⁵ WAC Tariff, attached to Qwest's Opening Brief as Exhibit C.

26 ⁶ *TSR Wireless Order*, ¶30.

26 ⁷ *Id.*

1 interconnection. Examples include private lines between a CMRS provider's transmitter site and
2 its switch. Another example is an inbound 800 service, which would allow callers to place a
3 paging call without incurring a toll charge. WAC and those other offerings that are not
4 necessary for interconnection do not need to be included in an interconnection agreement, and
5 may be charged for.

6
7 **C. THE PURPOSE OF THIS PROCEEDING IS TO DETERMINE WHETHER WAC**
8 **IS NECESSARY FOR INTERCONNECTION**

9 The purpose of this proceeding is whether WAC is necessary for interconnection, not
10 whether WAC is in the public interest. The public interest test bears no relationship to whether
11 WAC is necessary for interconnection. Handy Page argues that WAC is in the public interest
12 because it is efficient. Handy Page claims that WAC conserves scarce numbering resources and
13 allows the dialing of a single 7 digit number over a geographically wide calling area, and
14 provides savings for paging carriers and their customers. However, whether WAC is in the
15 public interest is irrelevant to whether it is necessary for interconnection.

16
17
18 **D. QWEST IS ENTITLED TO CHARGE FOR WAC BECAUSE WITHOUT WAC**
19 **TOLL CHARGES WOULD BE ASSESSED TO CALLERS**

20 At pages 5-6 of its Opening Brief, Handy Page attempts to argue that the FCC intended
21 for its decision about WAC in *TSR Wireless* to apply only to situations where a toll call is made
22 by a Qwest subscriber to a paging carrier number. Handy Page tries to convince the Commission
23 that there is not a toll call made under a WAC arrangement because under WAC a 7 digit number
24 is dialed and the call goes through without the caller being charged a toll. Handy Page further
25 states that callers dialing "toll" calls in Arizona are required to dial 1 + 10 digits.

26 Handy Page downplays the fact that before WAC was developed, all calls to pagers that

1 have NXX numbers assigned from another rate center than the calling party's local area were
2 subject to toll charges against the calling party.⁸ The sole purpose of WAC is to establish a
3 mechanism for Qwest landline callers to dial a pager without incurring the toll that would have
4 been assessed but for the WAC offering.⁹ Handy Page's argument attempts to take the absence
5 of 1+ dialing that is built into WAC, and the absence of toll charges that is the purposeful result
6 of WAC, as evidence that the call must have been local and not toll. Of course, that analysis is
7 circular, and wrong.

8 In any event, Handy Page's attempt to distinguish the FCC's ruling in the *TSR Wireless*
9 *Order* fails, because as discussed above, the WAC offering Handy Page complains of was the
10 same offering the FCC considered in the *TSR Wireless* matter.

11
12 **E. WAC CHARGES ARE SET IN THE WAC TARIFF, AND SHOULD NOT BE**
13 **ADDRESSED IN SECTION 252 ARBITRATION**

14 On pages 9-11 of its Opening Brief, Handy Page repeats its claims that WAC billings are
15 for "local" traffic; accordingly, Handy Page asserts that such calls are covered by 47 C.F.R.
16 51.703. Handy Page concludes that Qwest may not charge for delivering such calls. Handy
17 Page also states that the charges for WAC are intercarrier compensation obligations, and as such,
18 may not be embodied in tariffs under the *T-Mobile Order*.

19 Handy Page's arguments depend on its re-argument of the FCC's decision in the *TSR*
20 *Wireless Order*, which held as follows:

21 30. TSR asserts that rule 51.703(b) prohibits U S West from charging for "wide
22 area calling" service. We disagree. We find persuasive U S West's argument that

23 ⁸ Handy Page admits, "[I]n the absence of WAC, Handy Page would be required to provision
24 many number blocks or standard NXX codes in numerous rate centers and request that Qwest
25 provision numerous physical trunk facilities, to effect a partial duplication of the WAC local
26 calling capability." Handy Page Opening Brief, fn. 14.

⁹ "WAC operates to suppress any toll charge that would apply to any land-to-mobile toll call
between exchanges, when that call is originated by a Qwest landline customer to a WAC
telephone number." Weinstein Declaration, ¶4.

1 "wide area calling" services are not necessary for interconnection or for the
2 provision of TSR's service to its customers. We conclude, therefore, that Section
3 51.703(b) does not compel a LEC to offer wide area calling or similar services
4 without charge. Indeed, LECs are not obligated under our rules to provide such
5 services at all; accordingly, it would seem incongruous for LECs who choose to
6 offer these services not to be able to charge for them.¹⁰

7 As noted above, none of Handy Page's arguments merit a different answer than the FCC has
8 already provided to this same question applied to this same tariff, about this same WAC service.

9 Handy Page also argues that the WAC charges are too high. However, the charges are
10 those established in Qwest's tariff, which has been approved by the Arizona Corporation
11 Commission. There is no basis in this arbitration proceeding to review the rates associated with
12 WAC. This arbitration proceeds under very specialized statutory provisions and rules. Section
13 252(d) of the Telecommunications Act of 1996 provides for state commission review of the
14 justness and reasonableness only of rates for the interconnection of facilities and equipment for
15 purpose of subsection (c) (2) of section 251, and for network elements for purposes of subsection
16 (c) (3) of such section. As demonstrated above, WAC is a billing service. It does not concern
17 interconnection of facilities or network elements.

18
19 **F. HANDY PAGE'S ALLEGATIONS REGARDING QWEST'S RESPONSES TO**
20 **DATA REQUESTS ARE UNSUPPORTED AND NOT PROPERLY RAISED IN**
21 **BRIEFS AT THIS STAGE OF THE PROCEEDING**

22 Handy Page devotes part of its Opening Brief to a request that the Commission should
23 "issue sanctions to Qwest for its failure to respond to germane questions, failure to respond
24 truthfully and completely to the Data Request, and its excessive use of objections to avoid
25 providing information beneficial to Handy Page." Qwest denies each and every one of Handy
26 Page's allegations.

Qwest states that the legal objections Qwest interposed were made timely, were made
properly, and were justified in every instance. Further, the responses Qwest provided were true

¹⁰ *TSR Wireless Order*, ¶30 (footnotes omitted).

1 and accurate responses to the best of Qwest's knowledge and belief.

2 Handy Page has not followed the procedural processes which are open to a litigant, and
3 indeed which are required for the resolution of discovery disputes. Under Ariz. R. Civ. P.
4 37(a)(2)(C) Handy Page is required to meet and confer to make "good faith efforts" to resolve
5 disputes after data requests are served and before a motion to compel may be filed. This meet
6 and confer obligation allows parties to refine and narrow such requests, and to reach agreement
7 on as many issues as possible. A litigant's failure to make good faith efforts to resolve discovery
8 disputes prolongs and increases the costs of litigation, and amounts to an abuse of the discovery
9 process.

10 Handy Page has completely failed to make good faith efforts in this regard. Indeed,
11 Handy Page has skipped over even filing a motion to compel, or a request for a procedural
12 conference, and gone directly to a draconian request for sanctions, coupled with unsupported
13 allegations that Qwest's responses are intentionally misleading and that Qwest's legal objections
14 amount to unethical conduct. Qwest is more than willing to argue those matters, in a fair
15 exchange, if the Commission determines that this proceeding should go forward after this round
16 of legal briefs.

17 At this stage of the arbitration, the Commission has requested arguments on the threshold
18 legal question of whether WAC should be included in the arbitration. That is a legal issue about
19 which there are no genuine issues of material facts. Therefore, Qwest respectfully requests that
20 Commission deny Handy Page's request for sanctions, and that the Commission proceed to rule
21 on the legal questions which have been briefed.

22

23

III. CONCLUSION

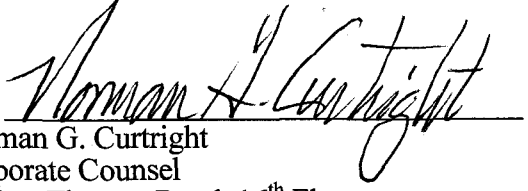
24

25 For the foregoing reasons, Qwest respectfully renews its request that the Hearing
26 Division issue a proposed ruling consistent with the ruling of the Federal Communications

1 Commission ("FCC"), finding that "Wide Area Calling," which allows a paging carrier to pay
2 the long distance toll charges incurred by Qwest subscribers who dial the paging carrier's
3 customers, is a billing service, and is not a telecommunications service, or an interconnection
4 facility or a network element under Section 251(b) of the Act; that ILECs who choose to offer
5 "Wide Area Calling" may charge paging carriers for that billing service, and such charges do not
6 violate any statutes or regulations regarding how interconnecting carriers compensate each other
7 for the transport and termination of calls; and that "Wide Area Calling" is not necessary for
8 Handy Page to interconnect to Qwest or for Handy Page to provide paging services to its
9 customers. Accordingly, the issues Handy Page seeks to arbitrate are not required to be part of
10 an interconnection agreement under the Act, and therefore have no place in an interconnection
11 arbitration under Section 252(b) of the Act. Qwest's offering of "Wide Area Calling" by way of
12 its tariff is appropriate.

13 RESPECTFULLY SUBMITTED, this 1st day of September, 2006.

14 QWEST CORPORATION

15
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23 for filing this 1st day of September, 2006, to:

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27 COPY of the foregoing hand delivered
28 this 1st day of September, 2006, to:

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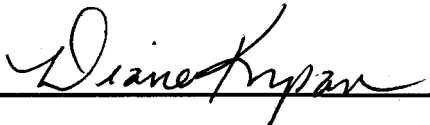
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26

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **JEFF HATCH-MILLER**

 Chairman

3 **WILLIAM MUNDELL**

 Commissioner

4 **MIKE GLEASON**

 Commissioner

5 **KRISTIN MAYES**

 Commissioner

6 **BARRY WONG**

 Commissioner

7
8 **IN THE MATTER OF QWEST**
9 **CORPORATION'S APPLICATION FOR**
10 **ARBITRATION PROCEDURE AND**
11 **APPROVAL OF INTERCONNECTION**
12 **AGREEMENT WITH HANDY PAGE,**
13 **PURSUANT TO SECTION 252(B) OF THE**
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15 **AMENDED BY THE**
16 **TELECOMMUNICATIONS ACT OF 1996,**
17 **AND THE APPLICABLE STATE LAWS**

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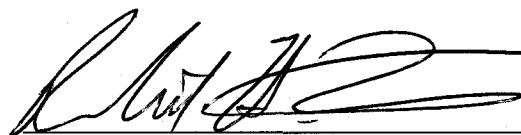
SECOND DECLARATION OF
ROBERT H WEINSTEIN

- 15 1. My name is Robert H. Weinstein. I am employed by the Wholesale Carrier Division of
16 Qwest Communications, Inc. ("Qwest") as a Staff Witness Representative. My business
17 address is 1801 California Street, Floor 2400, Denver, CO 80202.
- 18 2. I previously filed a Declaration in Support of Qwest's Opening Brief in this matter.
- 19 3. As it pertains to paging providers, the Qwest Wide Area Calling ("WAC") tariff that was
20 at issue in the FCC's *TSR Wireless* proceeding is the same today as it was during the
21 pendency of the *TSR Wireless* proceeding before the FCC. The Arizona WAC tariff was
22 effective 10/20/97. The WAC tariff was modified in 2003 to apply only to paging
23 providers. No other substantive changes were made, or have been made since. The
24 tariff now appears in Section 16.3 of the Arizona Access Service Price Cap Tariff.
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I declare under penalty of perjury that the foregoing is true and correct.

Dated this 31th day of August, 2006.


Robert H Weinstein

Subscribed and sworn to me
this 31st day of August, 2006.


Notary Public

My commission expires 4/13/10.